

DIVISION I

D.P. MARSHALL JR., JUDGE
ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

CACR06-311

31 January 2007

BILLY FREEMAN SR.
APPELLANT

AN APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT [CR-O3-
1172-5]

v.
STATE OF ARKANSAS
APPELLEE

HONORABLE ROBERT HOLDEN
WYATT JR., JUDGE

AFFIRMED

D.P. Marshall Jr., Judge

Billy Freeman Sr. pleaded guilty to theft of an unspecified amount of property worth \$2,500.00 or more from Pine Bluff while he served as a city council member. The relevant statute does not set or limit restitution. Ark. Code Ann. § 5-36-103 (Repl. 2006). His plea agreement with the State reserved the amount of restitution for sentencing, which was deferred pending a related federal criminal prosecution in which Freeman agreed to cooperate. The State eventually sought restitution of \$176,848.00 to Pine Bluff. At sentencing Freeman objected to that amount, though he was willing to pay \$71,648.00. After a recess, however, Freeman agreed to the restitution the State sought. His lawyer said: "Judge, my client has decided to agree

to the restitution even though it was not part of the original agreement nor part of the original plea. He's agreeing to the restitution as put in there by the State."

Freeman cannot appeal his guilty plea. But he can and does appeal from the circuit court's denial of his later motion to correct what Freeman says is an illegal sentence — a sentence Freeman argues imposes a greater restitution obligation than he pleaded guilty to.

Freeman's sentence is not void on its face or illegal. Our cases hold that a "sentence is void or illegal when the trial court lacks the authority to impose it." *Brown v. State*, 85 Ark. App. 382, 388, 155 S.W.3d 22, 25 (2004). The circuit court has authority to impose restitution in an amount "decided by agreement between a defendant and the victim represented by the prosecuting attorney." Ark. Code Ann. § 5-4-205(b)(4)(B) (Repl. 2006).

Neither the information nor Freeman's guilty plea specified the value of the property he took. At the sentencing hearing, Freeman and Pine Bluff (through the prosecutor) agreed on restitution of \$176,848.00. This agreement makes this case different from all the cases on which Freeman relies where the defendant objected in the circuit court to the amount of restitution. *E.g., Simmons v. State*, 90 Ark. App. 273, 278, 205 S.W.3d 194, 197 (2005). We therefore affirm the judgment and Freeman's sentence.

HART and HEFFLEY, JJ., agree.

